IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NOS. : 23821 AND 25849 OF 2001

WRIT PETITION NO.23821 OF 2001:

Between:

Jamga Srinivasa Reddy,

S/o Nagi Reddy, Aged about 38 years, R/o D.No.3/196,

Takkellapadu, Guntur District,

Licensee of M/s.Sri Siva Sai Wines,

(Licensee No.659)

..... PETITIONER

AND

1. Government of Andhra Pradesh,

Excise Department, Secretariat,

Hyderabad rep. by its Secretary.

2. The Commissioner for Prohibition and Excise,

Government of Andhra Pradesh, Nampally,

Hyderabad.

3. The Prohibition and Excise Superintendent,

Guntur, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the Memo. of the 1st respondent issued in Memo.No.10013/Ex.III(2)/2000-I dated 15-03-2001 in rejecting the claim of the petitioner for refund of the proportionate rentals and licence fee for the period from 01-04-2000 to 10-10-2000 during which period the petitioner could not conduct the business, as arbitrary, illegal and consequently direct the respondents to refund the rentals and licence fee to the petitioner forthwith for the period during which the petitioner could not conduct business.

Counsel for the Petitioner: MR.A.JAGANNADHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

and

WRIT PETITION NO : 25849 of 2001

Between:

M/s.Vinayaka Wines, IL-24 licencee, T.P.Area,

Tirupathi, rep. by its licencee A.Subrahmanyam,

S/o A.Chengal Rayudu, Aged about 36 years,

Occ: Business, R/o Tirupati, Chittoor District.

..... PETITIONER

AND

1. The Prohibition & Excise Superintendent,

Chittoor District at Chittoor.

2. The Commissioner for Proh. & Excise,

Govt. of A.P., Hyderabad.

3. The Government of A.P., rep. by its

Principal Secretary, Revenue (Excise) Department,

Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondents in not refunding the licence fee for wrongful closure period under Section 31 of A.P. Excise Act during 06-09-1998 to 31-03-1999 and Cr.No.17735/2000/CPE/G3, Dt.01-05-2001 of the second respondent and Rc.No.2127/98/A1, dated 03-08-2000 of the first respondent as illegal arbitrary void and against principles of natural justice and contrary to law and direct the respondents to refund the proportionate licence fee from 06-09-1998 to 31-03-1999 along with an interest @ 18% p.a. by suspending Cr.no.17735/2000/CPE/G3, Dated 01-05-2001 of the second respondent and Rc.No.2127/98/A1, Dated 03-08-2000 of the first respondent.

Counsel for the Petitioner: MR.T.AMARNATH GOUD

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

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COMMON ORDER:

Since these two writ petitions involved common question, they are being taken up together for disposal.

Heard Sri A.Jagannadharao and Sri T.Amarnath Goud, the learned Counsel appearing in these two writ petitions on behalf of the petitioners respectively and the learned Government Pleader for Excise.

In W.P.No.23821 of 2001 the petitioner by way of writ of Mandamus seeks to assail the impugned memo dated 15-03-2001 rejecting the claim of the petitioner for refund of the proportionate rentals and licence fee for the period from 01-04-2000 to 10-10-2000 during which period the petitioner could not conduct the business, as illegal and bad.

The case of the petitioner in brief is that the respondents herein have granted licence in Form No.IL 24 in favour of the petitioner and accordingly he has been running the business without any complaint. Subsequently, said licence was renewed for the excise year 1999-2000. On the application made for renewal for the

year 2000-2001, 3rd respondent herein refused to consider the same. However, on the application filed by the petitioner before the 1st respondent requesting to renew the licence, the 1st respondent herein vide memo dated 14-09-2000 accepted the said request of renewal for the year 2000-2001. In pursuance of the same on 15-09-2001 the 2nd respondent directed the 3rd respondent to renew the licence for the excise year 2000-2001, whereupon on 10-10-2000 the licence was renewed by the 3rd respondent. Having regard to the interregnum period i.e., 01-04-2000 to 10-10-2000 the petitioner could not possibly carry on the business for want of renewal and more so though the licence was renewed on 10-10-2000 by the 3rd respondent, the licence fee for the entire excise year was collected, as if it is granted for the whole year i.e., 01-04-2000 to 31-03-2001. In view of the same, the petitioner complains that the collection of the licence fee for the entire year when no such licence was granted in the said interregnum period is wholly illegal and hence sought refund of proportionate amounts. On the basis of the application made, the respondents herein have rejected the claim of the petitioner under the impugned memo. Hence, the Writ Petition.

In W.P. No.25849 of 2001 the petitioner sought writ of Mandamus declaring the action of the respondents in not refunding the licence fee for wrongful closure period under Section 31 of A.P. Excise Act during 06-09-1998 to 31-03-1999, as illegal and bad and consequently to set aside the orders rejecting the said claim.

The case of the petitioner is that he is a holder of licence viz., IL-24 for the excise year 1998-1999 from 01-04-1998 to 31-03-1999. Accordingly, he paid Rs.6,00,000/- towards licence fee and doing the business. However, on a false case registered by the S.H.O., Excise Station, Tirupathi on 19-08-1998 under Section 36(d) of A.P. Excise Act, the licence was cancelled on 02-01-1998 and the said orders were also confirmed in appeal. However, in W.P.No.19229 of 1999 this Court as per orders dated 31-12-1999 set aside the said orders and cancelled the same. Even Criminal Petition No.4617 of 1999 filed under Section 482 of Cr.P.C. seeking to quash the proceedings dated 19-08-1998 was allowed by this Court by quashing the said proceedings. In view of the aforesaid circumstances, it is submitted that the petitioner could not possibly do business from 06-09-1998 to 31-03-1999 due to suspension/cancellation of licence on an allegation of loose sales. Therefore, ultimately he was permitted to carry on the business for the excise year 2000-2001. It

is submitted that G.O.Ms.No.122 dated 02-03-2000 specifically contemplated that the refund of the licence fee in respect of the cases which were suspended/cancelled under Rule 6 and loose cases and subsequently revoked by restoring the licences. The aforesaid directions issued by the Government are still in force and thus petitioner is entitled for refund of the proportionate amount. In spite of petitioner approached the respondents seeking refund of the proportionate licence fees, the request was rejected by the 1st respondent on 03-08-2000 and even on further appeal the 2nd respondent directed the 1st respondent to pass speaking order. Having regard to the same, there is absolutely no justification in withholding the amounts. Hence, the Writ Petition.

The learned Counsel appearing on behalf of the petitioners submit that having regard to the peculiar facts and circumstances, whereby no business could possibly be run, for which the petitioner cannot be found fault with, the respondents are not entitled to collect the licence fee for the entire period and therefore they are entitled to refund the licence fee proportionately for the said period.

The learned Government Pleader placed reliance on the decision of the full bench of this Court in SRI NARSIMHA WINES v. PROHIBITION AND EXCISE SUPERINTENDENT, wherein it was held that no such relief can be granted and petitioners not entitled to refund.

Having heard the counsel on either side and on perusal of the material the only question which falls for consideration is, whether the petitioners can seek the remedy by way of these writ petitions under article 226 of the constitution of India for refund of the amounts.

There is no dispute to the facts that petitioners are holding licences and due to reasons as pointed out for certain periods no business could be run, though the petitioners have paid licence fee for the entire year. Therefore, it is their case that the said periods, in which no business could possibly run, are not due to reasons attributable to them, but absolutely for the acts on the part of the respondents herein and therefore they are entitled for the refund. In SRI NARASIMHA's case a full bench of this Court considering the A.P. Indian Liquor and Foreign Liquor Rules, 1970 Rule 25 (9) (inserted by G.O.Ms.No.190 Revenue (Ex.III) Dept., dated 24-03-1998) held that no writ of Mandamus be issued directing the authorities to grant remission for the period during which no business was carried on. It was further held

that a matter governed by *qua* contract would not attract the writ jurisdiction of this Court as in such a matter public law element is not involved. The State by reason of any statutory rule or otherwise can reserve unto itself the right to revise the licence fee and/or the matters ancillary or incidental thereto. Only because some hardship is caused, the same by itself may not be a ground for declaring the same *ultra vires.*

The learned Counsel appearing for the petitioners sought to place reliance on the decisions reported in SHIRDI SAI WINES v. COMMISSIONER OF PROHIBITION AND EXCISE, GOVT. OF A.P. and NAGA CHENGAL REDDY v. PROH. AND EXCISE SUPERINTENDENT, CUDDAPAH DISTRICT, whereby the learned single judge of this Court allowed the Writ Petitions directing the refund of proportionate licence fee from out of the licence fee paid for the relevant period.

In STATE OF U.P. v. JAGJEET SINGH the Supreme Court considering the similar such question as to the remission out of the licencee fee, it was held that it is for the authorities concerned to consider the merit of the claim and allow or not allow it looking to the facts and circumstances of the case and further held that such application for remission/damages for closure of shops is maintainable.

Having regard to the principles as laid down by the full bench of this Court vis-à-vis that of the Apex Court, as mentioned above, it is seen that the discretion in regard to the entitlement for refund is totally vested with the authorities concerned and it is for them to pass appropriate orders and therefore no writ petition can be filed under Article 226 of the Constitution of India seeking any such relief on merits. Hence, I do not find any justification to entertain the relief as claimed in these two writ petitions filed under article 226 of the Constitution of India.

The Writ Petitions are, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated -11-2004.

SKMR

To

1. The Proh. & Excise Superintendent,

Chittoor District at Chittoor.

2. The Commissioner of Proh. & Excise,

Govt. of A.P., Hyderabad.

3. The Principal Secretary, Revenue (Excise) Department,

Secretariat, Hyderabad.

4. 2 CCs to the G.P. for Prohibition & Excise, High Court of A.P.,

Hyderabad, (OUT).

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